

REMARKS/ARGUMENTS

Claims 1 through 20 remain pending. Claims 1 through 20 have not been amended by the present response.

In the Office Action, claims 1 through 20 were rejected under 35 U.S.C. 102(b) being anticipated by U.S. Patent No. 3,934,593 to Mellinger (hereinafter "the Mellinger patent"). Applicant's respectfully disagree.

Independent claim 1 is directed to a molded breast pad for a brassiere including one or more first layers being formed from a first material having a first loft associated therewith; and one or more second layers being formed from a second material having a second loft associated therewith differing from that of said first material, wherein the molded breast pad is molded such that a portion thereof is compressed so that said first loft and said second loft are substantially the same.

The Mellinger patent is directed to a strapless brassiere having two breast supports that are each separately applied to the breasts of the wearer. Each breast support has a piece of plastic foam sandwiched between two woven fabric layers that form flat semi-circular supports with a surrounding border to effect attachment to the chest wall of the wearer. The Mellinger patent shows at Fig. 1 through 3, foam portions 16 having fabric pieces 20 that are each surrounded by wide flat border 10, flat tabs 12 and narrow border 14. Foam cushions are formed into cups and can be made larger for women with smaller breasts (column 2, lines 15 through 17 and 35 through 37, respectively).

The Office Action states that Mellinger discloses a molded breast pad for a strapless adhesive brassiere wherein the molded breast pad is molded such that a portion thereof (at 10) is compressed so that the first

loft and the second loft are substantially the same (as seen in figure 2 at the bottom at 10). (page 2)

The Applicant respectfully disagrees. The Mellinger patent does not disclose a molded breast pad that has a first material having a first loft associated therewith *and* a second material having a second loft associated therewith differing from that of the first material. The Mellinger patent states that the fabric pieces 20 are “knitted or woven” (column 1, line 59). Referring to the cross-section of fabric pieces 20 at Fig. 2, on opposite sides of plastic foam 18, in the foam cushion 16, at tabs 12 and at border 10, shows that they do not have a loft associated therewith. They are the same thickness at border 10 and tabs 12 and at cushion 16.

Further, the second loft that is referred to in the Office Action is not part of the breast pad at all, but is actually a portion of the border to which an adhesive is applied to attach the garment to the chest wall. (column 1, lines 65 through 69). As such, the Mellinger patent does not disclose a molded breast pad such that a portion thereof is compressed so that a first loft and the second loft are substantially the same, as claimed. Support for this distinction can be found in the specification. The specification states that “the present invention solves the problem of eliminating the straps while also providing the proper support with a soft, pliable undergarment. The breast support of this invention has a soft, firm border which adhesively attaches to the skin and a contour-cushioned foam cup partly covering the breast.” (column 1 lines 16 through 21). The Mellinger patent distinguishes between the border and the contour-cushioned foam cup. The arguments of the Office Action are inconsistent to that which is stated in the Mellinger patent. Reconsideration and withdrawal of 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claim 2 depends from claim 1 and is also allowable for the reasons stated above with respect to claim 1. Reconsideration and withdrawal of 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claim 3 depends from claim 1 and provides that the first material has elastomeric properties associated therewith.

The Office Action states that the material (18) of Mellinger is woven or knitted fabric and has elastomeric properties that differ from the first material in that they are less elastomeric. The Office Action also states that flexibility as being changed by manipulating the loft as claimed. (page 2) The Applicant respectfully disagrees with these statements.

In contrast, the Mellinger patent does not address any elastomeric properties of the material (18) at all. After reviewing the disclosure of the Mellinger patent at column 1, lines 53 through 63, reference numeral 18 refers to the flexibility of the plastic foam and the woven fabric pieces 20, not any elastomeric quality. Additionally, the tabs 12 and border 10 are meant to support the weight of the breast of the user in the absence of straps. By introducing an elastomeric quality to the woven fabric, the ability to provide this support in the absence of straps would be compromised. As such, the Mellinger patent does anticipate claim 3 that claims that the first material has elastomeric properties associated therewith.

Dependent claim 4 depends from dependent claim 3 and provides that the second material has elastomeric properties associated therewith that differ from those of the first material.

The Mellinger patent does not address any elastomeric properties associated with the second material. As such, the Mellinger patent does not anticipate claim 4.

Dependent claim 5 depends from claim 1 and provides that the first material has elastomeric properties that depend on said first loft such that the flexibility of the one or more first layers can be changed by manipulating the extent of the first loft.

The Office Action states that Mellinger discloses the flexibility as being changed by manipulating the loft as claimed. The compressed portion (at 10 as seen in figure 2) has different elastomeric properties (in that they are stiffer) than the remaining portion of the molded breast pad. The Applicant disagrees with this conclusion.

The Mellinger patent does not address the elastomeric properties of any material of the invention and thus does not relate any elastomeric properties to a first loft such that the flexibility of one or more first layers can be exchanged by manipulating the extent of the first loft.

The portion of the garment that is being addressed in the Mellinger patent at column 1, lines 57 through 64 is actually the border 10 and 14 and the tabs, that are not part of the breast pad 16 as discussed above. Further, the disclosure of the Mellinger patent only states that "this produces a firm, relatively stiff, border needed to provide the proper support. However, the quality of softness and flexibility of the woven fabric and plastic foam necessary to the comfort are still maintained". (column 1, lines 60 through 64). The characteristic that the Mellinger patent is referring is flexibility and stiffness not elastomeric quality. Flexibility and stiffness refer to the ability to bend, not to the ability to expand and retract. As such, the Mellinger patent does not anticipate claim 5.

Dependent claim 6 depends from independent claim 1 and provides that the compressed portion of the molded breast pad has different elastomeric properties than a remaining portion of the molded breast pad.

As discussed above, the elastomeric properties of any material are not addressed in the Mellinger patent. Reconsideration and withdrawal of 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claim 7 depends from independent claim 1 and provides for line of demarcation separating the compressed portion from the rest of the molded breast pad.

The Office Action states that “ the molded breast pad of Mellinger includes a line of demarcation (at 24) separating the compressed portion from the rest of the breast pad. The line of demarcation is formed on a body contacting surface of the pad so that the opposing surface of the breast pad is substantially smooth”. (page 3)

As discussed above, line 24 is a semi-circular edge of the contour foam cushion. This line is not a line of demarcation separating a compressed portion of the breast pad from the rest of the molded breast pad. In contrast, the line 24 separated the foam cushion from the compressed border 10, 14 and tabs 12 of the garment. As such, the Mellinger patent does not disclose a line of demarcation separating the compressed portion from the rest of the molded breast pad, as claimed.

Dependent claim 8 depends from claim 7 and provides that the line of demarcation is formed on a body contacting surface of the pad such that an opposing surface of the molded breast pad is substantially smooth.

Claim 8 is not anticipated for the reasons discussed with respect to dependent claim 7 from which it depends and for the reasons discussed with respect to independent claim 1.

Claim 9 is directed to a brassiere having the molded breast pad of claim 1. Claim 9 is not anticipated by the Mellinger patent for the reasons

discussed above with respect to claim 1. The Mellinger patent does not disclose a brassiere having a molded breast pad that is molded such that a portion is compressed so that the first loft and the second loft are substantially the same. In contrast, the Mellinger patent shown at Fig. 2, only discloses breast supports that each has a breast cushion 16 of plastic foam 18 that has a single loft and a separate border at 10 and 14 that is compressed. The second loft that is referred to in the Office Action is not part of the breast pad at all, but is actually a portion of the border to which an adhesive is applied to attach the garment to the chest wall. (column 1, lines 65 through 69).

Further, as discussed above, the Mellinger patent does not disclose a molded breast pad that has a first material having a first loft associated therewith *and* a second material having a second loft associated therewith differing from that of the first material. As such, the Mellinger patent does not disclose a molded breast pad such that a portion thereof is compressed so that the first loft and the second loft are substantially the same, as claimed. Reconsideration and withdrawal of 35 U.S.C. 102(b) rejection are respectfully requested.

Independent claim 10 is directed to a molded breast pad having a first part having a relatively full loft; and a second part having a loft relatively reduced from the loft of the first part, wherein the first part and the second part are both formed from a material block having one or more first layers of a first material and one or more second layers of a second material.

The Mellinger patent does not disclose a molded breast pad having a second part with a loft relatively reduced from the loft of the first part. As discussed above, the Mellinger patent discloses, at Fig. 2, a breast pad 16 having a foam cushion 18 that has a single loft and a separate border at 10 and 14 that is compressed. The second loft that is referred to in the

Office Action is not part of the breast pad at all, but is actually a portion of the border to which an adhesive is applied to attach the garment to the chest wall. (column 1, lines 65 through 69). As discussed above, support for this fact is found in the specification at column 1, lines 18 through 21. As such, the Mellinger patent does not disclose a molded breast pad having a second part having a loft relatively reduced from the loft of the first part, as claimed. Reconsideration and withdrawal of 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claim 11 depends from claim 10 and is also allowable for the reasons stated above with respect to claim 10. Reconsideration and withdrawal of 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claim 12 depends from claim 10 and provides that the first material has elastomeric properties associated therewith.

The Office Action states that the material (18) of Mellinger is woven or knitted fabric and has elastomeric properties that differ from the first material in that they are less elastomeric. Office Action also discloses that flexibility as being changed by manipulating the loft as claimed. The Applicant respectfully disagrees with these statements.

In contrast, the Mellinger patent does not address any elastomeric properties of the material (18) at all. After reviewing the disclosure of the Mellinger patent at column 1, lines 53 through 61, reference numeral 18 refers to a piece of plastic foam and reference numeral 20 refers to knitted or woven fabric pieces 20. As such, the Mellinger patent does not anticipate claim 12.

Dependent claim 13 depends from dependent claim 12 and provides that the second material has elastomeric properties associated therewith that differ from those of the first material.

The Mellinger patent does not address any elastomeric properties associated with the second material or the first material. As such, the Mellinger patent does not anticipate claim 13.

Dependent claim 14 depends from claim 10 and provides that the first material has elastomeric properties that depend on the loft thereof such that the flexibility of the one or more first layers can be changed by manipulating or changing the loft.

The Mellinger patent does not address the elastomeric properties of any material of the invention and thus does not relate any elastomeric properties to a loft such that the flexibility of one or more first layers can be exchanged by manipulating the extent of the first loft. The only property that is addressed in the Mellinger patent is the flexibility or stiffness of the border 10 and 14 and tab 12 of the garment. Flexibility and stiffness refer to the ability to bend, not to the ability to expand and retract. As such, the Mellinger patent does not anticipate claim 14.

Dependent claim 15 depends from independent claim 10 and provides that the second part has elastomeric properties that differ from the elastomeric properties of the first part.

The Mellinger patent does not address any elastomeric properties associated with the second part or the first part. As such, the Mellinger patent does not anticipate claim 15. Reconsideration and withdrawal of 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claim 16 depends from independent claim 10 and provides for line of demarcation separating the first part from the second part.

As discussed above with respect to claim 7, line 24 is a semi-circular edge of the contour foam cushion that separates the cushion 16 from the border 10 and 14. Line 24 is not a line of demarcation separating the first part of the molded breast pad from the part of the molded breast pad. In contrast, line 24 separates the foam cushion from the compressed border 10, 14 and tabs 12 of the garment. The assertions of the Office Action are not supported by the Mellinger patent. The Mellinger patent does not disclose a line of demarcation separating the first part from the second part, as claimed.

Dependent claim 17 depends from independent claim 16 and provides that the line of demarcation is formed on a body contacting surface of the pad such that an opposing surface of the molded breast pad is substantially smooth.

Claim 17 is not anticipated for the reasons discussed with respect to dependent claim 16 from which it depends and for the reasons discussed with respect to independent claim 1. The line of demarcation is not formed on a body contacting surface of the pad. In contrast, it is formed on an edge of the cushion and the border. As such, the Mellinger patent does not anticipate claim 17.

Claim 18 provides for a brassiere having the molded breast pad of claim 10.

Claim 18 is not anticipated by the Mellinger patent for the reasons discussed above with respect to claim 9. The Mellinger patent does not disclose a brassiere having a molded breast pad that is molded such that a portion is compressed so that the first loft and the second loft are substantially the same. In contrast, the Mellinger patent shown at Fig. 2 only discloses breast supports that each have a breast pad 16 having a foam cushion 18 that has a single loft and a separate border at 10 and 14

that is compressed. The second loft that is referred to in the Office Action is not part of the breast pad at all, but is actually a portion of the border to which an adhesive is applied to attach the garment to the chest wall. (column 1, lines 65 through 69). As such, the Mellinger patent does not disclose a molded breast pad such that a portion thereof is compressed so that the first loft and the second loft are substantially the same, as claimed. Reconsideration and withdrawal of 35 U.S.C. 102(b) rejection are respectfully requested.

Independent claim 19 is directed to a method of forming a molded breast pad, having the steps of providing a material block having one or more first layers of a first material and one or more second layers of a second material, the first material and the second material each having different lofts associated therewith; positioning the material block in a molding apparatus such that the molding apparatus can interact with the material block; causing the molding apparatus to interact with the material block to form one or more three-dimensional breast pads with a portion thereof being effected such that the portion has a relatively reduced loft, wherein the reduced loft portion of the three-dimensional breast pad has elastomeric properties associated therewith that are distinct from a remaining portion of the three-dimensional breast pad.

The Mellinger patent, as discussed above, does not disclose a garment that forms one or more three-dimensional breast pads with a portion thereof being effected such that the portion has a relatively reduced loft, wherein the reduced loft portion of the three dimensional breast pad has elastomeric properties associated therewith that are distinct from a remaining portion of the three-dimensional breast pad.

The Mellinger patent discloses a cushioning pad 16 having a continuous loft. (Figs. 1 and 2) The garment also has a border 10 and 14, separate from the pad 16 that lies against the chest wall, that is

compressed. The compressed portions 10, 14 and 12 of the Mellinger patent are made stiffer and less flexible. There is no recitation regarding the elastomeric properties of any material of the Mellinger patent. As such, the Mellinger patent does not anticipate claim 19.

Further, as discussed above, the Mellinger patent does not disclose a molded breast pad that has a first material having a first loft associated therewith *and* a second material having a second loft associated therewith differing from that of the first material. As such, the Mellinger patent does not disclose a molded breast pad such that a portion thereof is compressed so that the first loft and the second loft are substantially the same, as claimed. Reconsideration and withdrawal of 35 U.S.C. 102(b) rejection are respectfully requested.

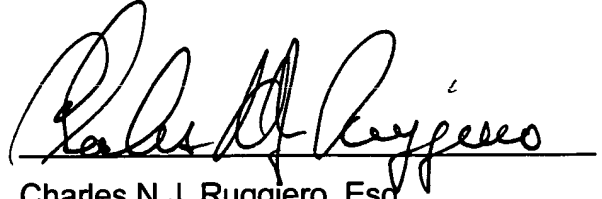
Claim 20 depends from independent claim 19 and provides that each of the one or more three-dimensional breast pads has a line of demarcation separates the reduced loft portion from the rest of the three dimensional breast pad.

As discussed above, line 24 is a semi-circular edge of the contour foam cushion. The Mellinger patent does not disclose any breast pad that have a line of demarcation that separates a reduced loft portion from the rest of the three dimensional breast pad. In contrast, line 24 separated the foam cushion from the compressed border 10, 14 and tabs 12 of the garment. As such, the Mellinger patent does not disclose one or more three-dimensional breast pads that have a line of demarcation separating the compressed portion from the rest of the molded breast pad, as claimed.

In view of the foregoing, Applicants respectfully submit that all claims presented in the application patently distinguish over the cited prior art and the cited combinations of same. Accordingly, Applicants

respectfully request favorable consideration and that this application be passed on to allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles N.J. Ruggiero", is written over a horizontal line.

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Date

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